Concise Explanatory Statement
Claimant Fraud and Overpayments

REASONS FOR ADOPTING RULES

The law was amended in 2007 to increase disqualification periods and add monetary penalties for claimants who commit unemployment insurance fraud more than once. The rules clarify how the penalties will be calculated, notice provided to the claimant and interested employer, and claimant reporting requirements. The rules also implement another law change stating that overpayments resulting from an employer's failure to correctly report wages and hours will not be charged to the claimant and 100% of benefits will be charged to the employer who made the error.

DIFFERENCES BETWEEN PROPOSED RULES AND ADOPTED RULES

None.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

Comment: The rules lack clarity on the waiver process. They should clarify that the process for requesting a waiver is separate from the process for challenging the underlying decision.

Reasons Not Incorporated in Final Rules: Amendments clarifying the waiver process will be included in the rule-making process filed as WSR 06-03-064.

Comment: The term "overpayment assessment" should be defined as the overpaid benefits alone and not include the penalty portion. Doing otherwise allows the accrual of interest on both the overpayment and the penalty and is not authorized under the law.

Reasons Not Incorporated in Final Rules: The rule is based on the advice of the department's legal counsel. RCW 50.20.070 assesses a penalty for certain occurrences of fraud based on a percentage of the total benefits overpaid. RCW 50.20.190 assesses interest on the "outstanding balance" of the overpayment. That outstanding balance should include both the unpaid benefits as well as unpaid penalties added because the claimant committed a subsequent act of fraud.

Comment: The determination of what constitutes a first, second, or third occurrence of fraud should be determined by a different set of facts, not a continuation of the same facts.

Incorporated in Final Rules: The rules provide that a second, third or subsequent occurrence of fraud will only be assessed if the fraudulent activity occurred at least two weeks after the mailing date of the previous decision. A continuation of the same set of facts would be part of the same occurrence of fraud.

Comment: Distinct occurrences of fraud should be treated separately, regardless of the date of the occurrence and even if the two fraudulent actions involve the same or overlapping weeks. If claimants make two conscious decisions to lie about two separate sets of facts, they should be penalized for both. There should not be a "grace period" in which a claimant may commit fraud without a penalty.

Reasons Not Incorporated in Final Rules: The rules provide that a separate occurrence of fraud will only be assessed if the action occurred at least two weeks after the mailing date of the prior decision. Penalties increase with subsequent occurrences of fraud and the prior decision gives notice to the claimant of what the penalty will be for a subsequent occurrence. The department has determined that two weeks allows adequate time to notify the claimant of the increased penalties for subsequent occurrences. It is hoped that the effect of this notice will be to decrease repeated instances of fraud. And while claimants will not receive a higher disqualification period or penalty for fraud that occurs within this "grace period", they will be required to repay benefits and be disqualified and assessed a penalty consistent with the occurrence of fraud assigned.

Comment: Partial payments received from claimants should be applied first to the overpaid benefits or the penalty, not to the interest. Otherwise, the claimant could be in a position where they are only paying towards the interest and never reach the outstanding balance.

Reasons Not Incorporated in Final Rules: The interest collected on overpaid benefits funds the department's collection and fraud detection activities. Payments received from claimants are applied to interest first in order to offset the department's costs in recovering the balance of the debt. Applying payments to the principal first would reduce the department's opportunity to recover interest and therefore cover its administrative costs.

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